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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE SOULIOTES, Petitioner, v. RANDY GROUNDS, Warden, Respondent.	}	1:06-cv-00667 AWI MJS HC ORDER CONSTRUING MOTION FOR IMMEDIATE RELEASE AS OBJECTIONS TO THE FINDINGS AND RECOMMENDATION (Docs. 175-77)
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Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 7, 2013, the Magistrate Judge issued Findings and a Recommendation ("F&R") that the petition be granted and that Petitioner be ordered released within thirty days of the adoption of the F&R by the District Court Judge unless Respondent notifies the Court of the state's intent to retry Petitioner. (See ECF No. 174 at 91-93.)

On March 8, 2013, Petitioner filed a motion for immediate release pending final resolution of the petition. (See ECF No. 175.) Respondent filed an opposition and Petitioner filed a reply on March 11, 2013. (See ECF Nos. 176-77.)

As stated in the F&R, the Magistrate Judge recommended conditional relief, i.e., Petitioner's release within thirty days of the grant of the petition, unless Respondent

1 undertakes appropriate action to retry Petitioner. Petitioner, in his motion, opposes the
2 recommended relief. The contentions in Petitioner's current motion could well be
3 characterized, in substance, as constituting an objection, at least in part, to the F&R, rather
4 than as a separate motion.

5 As Respondent notes in his opposition, the Court has provided short deadlines for filing
6 objections to the F&R. Accordingly, the petition should soon stand ready for adjudication and
7 may be promptly addressed by the District Court Judge. If the petition is adjudicated prior to
8 any finding on Petitioner's current motion, the contentions therein would be rendered moot.
9 If the petition is granted in Petitioner's favor and Petitioner seeks earlier release than
10 recommended in the F&R, many, perhaps most, of the same factual issues and arguments
11 raised in Petitioner's current motion would be relevant to the District Judge's determination..
12 See O'Brien v. O'Laughlin, 557 U.S. 1301 (2009); Hilton v. Braunskill, 481 U.S. 770, 776
13 (2007); Hays v. Farwell, 482 F. Supp. 2d 1180 (D. Nev. 2007); Elliot v. Williams, 2011 U.S.
14 Dist. LEXIS 123786 (D. Nev., Oct. 25, 2011).

15 Due to the rapidly changing procedural stance of this case, it is difficult to anticipate
16 whether Petitioner's current contentions would be better addressed by the Magistrate Judge
17 prior to District Judge adjudication or by the District Court Judge after close of the objection
18 period. The Court determines that, on balance, the interests of judicial efficiency dictate that
19 the current motion be treated as objections to the F&R. By so doing, the case should proceed
20 more efficiently, avoid piecemeal adjudication and give the Court greater flexibility in that the
21 Magistrate Judge may file an amended or supplemental F&R in light of the objections or,
22 alternatively, the District Court Judge may adopt, reject, or modify the F&R in light of the
23 objections.

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1 The Court recognizes that the parties may have objections to the F&R extending
2 beyond the issues raised by Petitioner's current motion. Both parties retain the right to file such
3 objections within the fourteen day period that commenced with the issuance of the F&R. Each
4 shall have fourteen days from the date of service of any such further objections in which to file
5 a reply.

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8 IT IS SO ORDERED.

9 Dated: March 12, 2013

1s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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